

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, NOVEMBER 19, 2003**

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of November 19, 2003, was called to order by Mayor Hitchcock at 7:02 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor Bill Sherrill, Lodi Police Chaplains.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 (a) Mayor Hitchcock presented a Certificate of Recognition to David Haas, representing First Church of Christ Scientist, located at 322 West Elm Street, which was dedicated as an historical site by the Lodi Historical Society at a ceremony conducted on Saturday, October 18, 2003.

D-3 (b) Public Works Director Prima reported that in the course of a few weeks the Public Works Department is losing nearly 100 years of service to the City through the retirements of Joe Ferrante, Water/Wastewater Supervisor (not in attendance), Ron Hertz, Street Maintenance Worker III, and Fran Forkas, Water/Wastewater Superintendent

Fran Forkas stated that when he arrived in Lodi in 1974 the population was 29,000 and it has more than doubled since that time. He and his staff took the White Slough facility through expansions in 1976 and 1990. The treatment facility is now undergoing tertiary treatment stages, a requirement from the regional board that will cost between \$30 to \$50 million. In 1976-77 the City introduced its water conservation program, which is still in existence today and is savings millions of gallons. Approximately eight years ago an educational program for grades K-6 was instituted. Mr. Forkas recalled that in the mid-1990s he participated in a lawsuit against Shell Oil Company, Dow Chemical Company, and Occidental Petroleum. After three and a half years, a settlement was reached related to the chemical dibromochloropropane. A 40-year agreement was settled on, in which Shell, Dow, and Occidental contributes heavily to the City on an annual basis. Now the City is facing another dilemma with the PCE/TCE situation and has exceeded \$20 million and four years of effort. He expressed hope for a settlement in favor of the City during the January 2004 Federal Court trial. Mr. Forkas noted that Lodi rarely chlorinates its water system, which he felt was a tribute to the employees of the Water/Wastewater Division who keep the water clean and bacteria free.

Ron Hertz stated that he served in the United States Navy Seabees prior to being hired by the City of Lodi and was proud of the work he has accomplished and the people he has worked with at the Municipal Service Center.

Mayor Hitchcock presented a Resolution of Appreciation to Fran Forkas, retiring Water/Wastewater Superintendent, and Ronald W. Hertz, retiring Street Maintenance Worker III.

D-3 (c) Dennis Lewis, President of Lodi Adopt-A-Child, reported that this is the program's 15th Christmas. He began the program in 1989 with 30 children participating, and this year it has over 1,600. Last year the all volunteer staff gave away 300 bicycles and 10 computers. Joe Merino from Merino Computer Concepts refurbishes for free all the used computers that are donated to the program. The Christmas party is scheduled for December 20 at the Boys and Girls Club. He encouraged all citizens to sponsor a child in the program.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Beckman second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

- E-1 Claims were approved in the amount of \$5,434,397.23.
 - E-2 The minutes of October 15, 2003 (Regular Meeting), October 28, 2003 (Shirtsleeve Session), November 4, 2003 (Shirtsleeve Session), November 4, 2003 (Special Meeting), and November 11, 2003 (Shirtsleeve Session) were approved as written.
 - E-3 "Accept the quarterly investment account report as required by law SB564" was **removed from the Consent Calendar and discussed and acted upon following the approval of the Consent Calendar**.
 - E-4 Adopted Resolution No. 2003-212 awarding the contract for the English Oaks Common Park Shade Structure, 2184 Newbury Circle, to Diede Construction, of Woodbridge, in the amount of \$32,281.23, and appropriated \$35,000 in accordance with staff recommendation.
 - E-5 Adopted Resolution No. 2003-213 approving the final map and Improvement Agreement for Legacy Estates Unit 1, Tract No. 3260, directed the City Manager and City Clerk to execute the improvement agreement and map on behalf of the City, and appropriated funds in the amount of \$14,000 for the required reimbursements.
 - E-6 Adopted Resolution No. 2003-214 accepting a portion of the improvements in Century Meadows Three, Unit No. 4, Tract No. 2769.
 - E-7 Adopted Resolution No. 2003-215 accepting a portion of the improvements for the Harney Lane Sanitary Sewer Lift Station.
 - E-8 Adopted Resolution No. 2003-216 authorizing a two-year contract extension to Out of Play Concessions for concession operations at Chapman Field/Armory Park and Softball Complex.
 - E-9 Adopted Resolution No. 2003-217 accepting funds in the approximate amount of \$100,000 from the State Citizens Option for Public Safety Grant offered through AB 1584 State Supplemental Law Enforcement Services funds.
 - E-10 Adopted Resolution No. 2003-218 approving Statement of Benefits between City of Lodi and Fire Mid-Management (unrepresented).
 - E-11 Set public hearing for December 17, 2003, to consider unmet transit needs in Lodi.
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ACTION ON ITEM REMOVED FROM CONSENT CALENDAR

- E-3 "Accept the quarterly investment account report as required by law SB564"

NOTE: Due to a potential conflict of interest related to his employment with Farmers and Merchants Bank, Council Member Land abstained from discussion and voting on this matter.

MOTION / ACTION:

The City Council, on motion of Council Member Beckman, Howard second, accepted the quarterly investment account report as required by law SB564. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – Land

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Jared Lopes stated that he was 16 years of age and attended Tokay High School as a freshman and sophomore. He is now a junior on independent study and he made this change because he felt that he was not living up to his potential as a student. In addition, he was troubled by things he saw at Tokay High School, e.g. sexual activity, alcoholism, drug abuse, depression, talk of suicide, smell of marijuana in the bathrooms. He expressed hope that a teen center could be created and asked Council what he could do to get it started.

Mayor Pro Tempore Howard pointed out that the 180 Teen Center is one such organization; however, she agreed that more quality programs and services for youth are needed in the community.

Council Member Beckman gave his business card to Mr. Lopes and extended an invitation to meet with him.

Council Member Hansen commented that the 180 Teen Center is a Christian-based organization and some youth are not comfortable in that setting.

Mr. Lopes acknowledged that many teens do not like church. It was not his intention to have a church- or religion-based teen center. He believed that the problem with teenagers today is due to a lack of attention and love.

Council Member Hansen suggested that civic organizations might be willing to help.

Mayor Hitchcock recommended that Mr. Lopes make a presentation to Lodi Unified School District, as it may have facilities that could be made available to him.

- Ken Bingaman reminded Council about the aquatics center, indoor sports facility, and DeBenedetti Park. Mr. Lopes' comments demonstrate that the needs of the youth in the community are not being met. He urged Council to see that at least one of its priority projects gets implemented.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider resolution confirming the 2003-04 Annual Report and levy of assessment for Downtown Lodi Business Improvement Area 1.

Deputy City Manager Keeter reported that at the meeting of October 15 Council received the 2003-04 Annual Report for Downtown Lodi Business Improvement Area (BIA) 1 and established the public hearing date. The public hearing is called for pursuant to Section 36535 of the California Streets and Highways Code. The public has an opportunity to present written or oral protests to the assessments being proposed. In order for such a protest to be successful, the protest must comply with the provisions of Sections 36524 and 36525 of the California Streets and Highways Code and be received from the owners of businesses in the improvement that are representing 50% or more of those member businesses who will pay the assessments for the proposed levy. If such a level of protest is not reached, then a resolution should be adopted by the Council confirming the report as originally filed or as amended by the Council. The adoption of such a resolution constitutes a levy of the assessment for the BIA during calendar year 2004.

Mayor Pro Tempore Howard was pleased that goals included the expansion of the BIA boundaries, and review and update of the assessment fees to better reflect membership benefits and an equitable fee structure.

Council Member Hansen questioned why the banners were not listed as a goal or objective.

Peter Westbrook, President of the Downtown Lodi Business Partnership (DLBP), replied that there were several options for funding the banners. He stated that an adopt-a-banner program was being considered, as is an adopt-a-tree program for the tree lights. He expressed hope that a Shirtsleeve Session could be held jointly with the DLBP to review its three-year commitment and ensure that Council is in agreement.

Council Member Hansen asked that the banners be included in the written objectives so that it is not forgotten.

Mr. Westbrook replied that the report can be amended now to include the banners as a major goal for 2004-05 with an emphasis on putting the plan in place and starting the program in 2004.

In response to City Manager Flynn, Mr. Westbrook reported that he was working with Electric Utility Director Vallow to have the tree lights done before the Parade of Lights event.

Hearing Opened to the Public

- Tim Vallem, business owner of Old Towne Antiques, protested the 2003-04 Annual Report and levy of assessment for Downtown Lodi BIA 1. He believed that Council failed to meet the prerequisites for allowing the 2004 billings and alleged that various California Streets and Highways Code sections had been violated as he verbalized and delineated in a written statement distributed to Council (filed). He read from Lodi Municipal Code Section 12.06.110 and noted that the deadline was not met, "Pursuant to the act, it shall be necessary for the board to present by September 1 an annual budget for city council review and approval prior to beginning the billing period." He believed that the board referred to was the advisory board, not the DLBP. He also stated that there was not proper notification of the public hearing, because a mailed notice was not sent to all BIA business owners.

Mr. Vallem pointed out that DLBP expenses are \$80,640 to cover rent, utilities, insurance, and payroll. The only absolute incomes listed in its budget are the assessments and City contributions of \$47,000. The assessment fees would be committed immediately toward paying fixed expenses, which he stated was contrary to state code requirements. He noted that the City and the advisory board have never established a formal written collection procedure. Further, he stated that the DLBP was formed under California Corporations Code as a non-profit corporation not for public use; therefore, he believed that the DLBP is not an extension of the City and the City has no jurisdiction. The loss of authority violates California Streets and Highway Code Section 36003 and Lodi Municipal Code Section 12.06.060 in the use of funds. He stated that any individual Council Member who would knowingly vote in favor of going forward with the assessment would be in violation of the law and could be held liable.

In answer to questions by Council Member Land, Mr. Vallem stated that he would not like to see the DLBP disestablished. He wanted it to operate in the manner approved by Council six years ago. He voiced concern that the organization had incurred expenses beyond its income. Mr. Vallem reported that he paid his assessment only for the first two years that the BIA was in place. He recalled the Council originally said it would match the assessment fees for the first two years as seed money, after which

the organization was to stand on its own. Last fall former DLBP Executive Director Lew VanBuskirk asked Council for \$35,000 to fund banners, which were never purchased. Mr. Vallem stated that many merchants downtown have expressed their disappointment with the BIA; however, they pay their assessments because they are afraid of the repercussions. He has asked, and been refused, to have a straw vote taken of all merchants in the BIA to ascertain what their real opinion is. Mr. Vallem stated that there are merchants in Zone B who should not be assessed because they do not benefit from tourism. There have been no improvements west of Church Street or north of Locust Street. He reported that the president of the Santa Rosa downtown business organization informed him that it had a similar situation, i.e. overloaded with expenses, and they decided to disband it. He stated that Finance Director McAthie acknowledged that there have been violations of the Federal Fair Credit Protection Act.

City Attorney Hays answered an inquiry by Mr. Vallem, explaining that appeals of City Council actions can be taken before the Superior Court of San Joaquin County. He pointed out that Streets and Highways code sections prior to 36530 apply only to the district when it is being formed. The operative code sections that deal with assessments are found at 36530 et seq. The timeline to follow is found in Section 36534, which states that the public hearing shall be held not less than ten days after the adoption of the resolution of intention. The City is in compliance with that timeline. Section 36534 b) states that the City Clerk shall give notice of the public hearing by causing the resolution of intention to be published once in a newspaper of general circulation in the city not less than seven days before the public hearing. The notification requirement was met. He recalled that the Council initially appointed an advisory board and at another point acted to make the DLBP its advisory board. The Downtown Lodi BIA follows the model used by other assessment organizations throughout the state. He commented that exemptions in the law say that banks are not subject to payments of taxes and license fees, and there is a large body of law that differentiates between taxes and assessments.

In response to Mr. Vallem, Mr. Hays explained that the DLBP is only in control of funds to the extent that it expends them based upon the budget.

Public Portion of Hearing Closed

City Manager Flynn agreed with Mr. Westbrook's earlier suggestion to have a special joint meeting with the DLBP to review its goals and objectives.

Mayor Hitchcock suggested that the matter be continued to the regularly scheduled meeting on December 17 to allow time for further research of Mr. Vallem's allegations of code violations.

Council Member Hansen was satisfied with the explanation given by Mr. Hays and saw no reason to delay action on the matter. He noted that other business owners could have protested the report; however, only one has appeared.

Mayor Pro Tempore Howard also was confident in the information Mr. Hays provided and felt that it would be appropriate to move forward with a decision. She agreed with Mr. Vallem that the DLBP's financial situation could be improved; however, Council voted earlier to fund it again as has been done in the past.

Council Member Beckman commented that he would like to see more of an effort by the DLBP to become self sufficient.

In reply to Council Member Beckman, Mr. Hays explained that the law under which it was formed calls it a business improvement "area", not a business improvement "district".

In answer to Mr. Hays, City Clerk Blackston reported that the only protest received regarding the 2003-04 Annual Report and levy of assessment for Downtown Lodi BIA 1 was the statement presented by Tim Vallem.

MOTION:

Council Member Hansen made a motion, Beckman second, to adopt Resolution No. 2003-219 confirming the 2003-04 Annual Report for Downtown Lodi BIA 1 and levy of assessment.

DISCUSSION:

Council Member Land suggested that Mr. Hays research the regulations and address in writing whether or not all the legal requirements are being met.

Mayor Hitchcock recommended that Mr. Hays meet with Mr. Vallem to discuss the laws regulating the BIA.

VOTE:

The above motion carried by a unanimous vote.

H. COMMUNICATIONS

H-1 Claims filed against the City of Lodi – None

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 Appointments – None

H-4 Miscellaneous

a) City Clerk Blackston presented the cumulative Monthly Protocol Account Report through October 31, 2003.

RECESS

At 8:57 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 9:07 p.m.

I. REGULAR CALENDAR

I-1 "Discussion regarding proposed audit (agreed-upon procedures) of Envision Law Group's billings"

Council Member Hansen explained that the driving factor for him regarding this topic was whether or not the taxpayers of Lodi have a stake in this matter and may stand to lose anything, which he believed they do. He recalled that when discussions took place about getting a second opinion, his main concern was related to costs. A report from the Finance Department indicates that \$21,272,763.31 has been spent thus far on the Environmental Abatement Program (PCE/TCE) litigation. Of this amount, \$14.9 million came from the Lehman Bros. loan and \$6.3 million came from the Water Fund. During the process of interviewing attorneys, the firm of Barger & Wolen was found to have extensive experience in reviewing litigation cases. Mr. Hansen disclosed that he met with the City Attorney today and spoke on the phone to John Meyer of Envision Law Group regarding this matter. Mr. Meyer believes that Barger & Wolen has potential conflicts of interest issues, which should prohibit it from representing the City. Robert Levy and David McMahon of Barger & Wolen disagree with Mr. Meyer on this matter. Mr. Hansen recommended that Council appropriate an initial retainer of \$50,000 from the Water Fund for Barger & Wolen to conduct an audit of Envision Law Group's billings to the City. He noted that an extensive audit of billings (which began in 1996-97) would take months to complete and is estimated at \$100,000 to get an initial level of answers. He believed that it was Council's responsibility to determine whether or not the fees charged to the City were reasonable and necessary. He felt accountability to the taxpayers because of the issues and concerns that have been raised.

Mayor Hitchcock explained that during discussions she and Council Member Hansen had with attorneys they began to have concerns and felt that it would be important to obtain hard data. They believed that conducting an audit would be a better first step than pursuing the second opinion at this time.

Council Member Beckman asked whether the audit would incorporate an examination of the City's relationship with Lehman Bros. and potential impacts to that relationship, to which Mr. Hansen replied in the affirmative.

Council Member Land inquired if the audit would affect USF&G's current actions related to defense costs, to which City Attorney Hays stated that there was a real potential for it to cause an impact to that matter.

Council Member Land suggested that the audit be performed after the trial in January and the USF&G case is settled.

Council Member Hansen replied that he did not foresee the litigation ending anytime in the near future.

Council Member Beckman pointed out that if the City is placed in a position of litigating against its own insurance company to get it to pay defense costs, the results from the audit would give Council information to make a better decision should such a lawsuit take place. The audit would provide unbiased detailed information about the legitimacy of bills that were submitted to USF&G. In response to Mr. Land's concern about timing, he noted that if there are unreasonable or unnecessary billings taking place, the longer the City waits to do the audit, the more damage that can be done.

Council Member Hansen noted that one of the concerns expressed by citizens is whether there will be money left to pay for the cleanup. He learned that in a similar case at the Lincoln shopping center, handled by attorney Michael Donovan, \$60 million was involved and issues were raised about whether there would be sufficient money remaining to clean up the contamination.

Mayor Hitchcock added that there was a pattern that took place in the Lincoln case, which had been addressed by the judge, and Mr. Donovan's firm has now repeated this similar handling in Lodi's PCE/TCE litigation. This she felt was cause for considerable concern.

City Manager Flynn stated that he fully supported the recommendation to audit the billings of Envision Law Group. He reported that two former Council Members called and reminded him that, when this case began, they were told that it should be settled within a year or two.

Mayor Hitchcock asked Mr. Flynn why, for the first time, he included a statement in his budget transmittal that the City was involved in groundwater contamination litigation, which could result in increased rates to citizens.

Mr. Flynn replied that if there is an element similar to a deductible, the ratepayers would bear the burden for the cost.

Mayor Hitchcock asked why City Attorney Hays had not responded about yesterday's opinion from Judge Damrell, to which he replied that he was not aware of it.

Mayor Pro Tempore Howard disclosed that Council Member Hansen contacted her yesterday to provide background material related this matter.

At the request of Mayor Pro Tempore Howard, Robert Levy of Barger & Wolen reported that his firm was hired by all of the primary insurers for Lincoln Properties. He believed that some of the insurers, e.g. Lumberman's and Fireman's Fund, insure businesses in Lodi. He commented that it would be improbable to find a qualified firm that has never been hired by any of the entities against which the City has a cause of action.

In response to Mayor Hitchcock, Mr. Levy explained that there is a coverage action, in which one of Barger & Wolen's clients, i.e. Chubb, has a third-level excess policy insuring the City of Lodi. That coverage action is stayed at this time. Mr. Levy offered that he and his partners would respond in writing to the City regarding any potential conflicts of interest.

Mr. Hays reported that Barger & Wolen represent Hartford Insurance, which is one of the City's insurers that it will potentially look to for coverage. He noted that this case is currently stayed.

Mr. Levy responded that his firm would not take a position adverse to the City on behalf of any client, nor would it take a position for the City adverse to an existing client on the same matter. He stated that if the action becomes "un-stayed", Barger & Wolen would get off the case.

Council Member Beckman asked how Barger & Wolen proposes to maintain the Canon of Ethics in regard to its duties to its clients past, present, and future.

Mr. Levy explained that the Canon of Ethics specifies solutions for certain problems. In an existing matter an attorney cannot take two sides of the same position in favor of two separate clients. Mr. Levy stated that he would address in a written statement the Canons, which he believed were material as they apply to this engagement.

David McMahon of Barger & Wolen added that as a precaution an ethical wall would be set up within the firm to ensure that Ethan Miller (a partner in the firm) and anyone affiliated with him who worked with Federal Insurance, would not be involved in any way with the audit for the City.

Referencing the "blue sheet" (filed), Mayor Pro Tempore Howard noted that the motion on September 17 had three elements and she asked whether Council was no longer interested in getting a second opinion regarding the current legal strategy.

Council Member Hansen believed that once the audit was completed, there may not be a need to pursue a second opinion.

In reply to questions posed by Council Member Land, Mr. McMahon reported that since 1990-91 Barger & Wolen has audited more than 60 firms on mass tort and very large cases. He explained that audits are requested to confirm that legal fees were reasonable and necessarily incurred, that there were not mathematical errors, and to ensure that fees from other cases were not mistakenly added into the bills. Barger & Wolen has been involved in cases concerning ethical billing practices and has had cases before Supreme Courts throughout the United States dealing with a wide number of billing issues. He clarified that the purpose of the audit is not to find something wrong; it is to make sure that the City is getting the value for its dollar. There is also a qualitative function that is brought to the audit, i.e. a determination is made regarding whether an amount spent on a particular task, or group of tasks, was reasonable and appropriate.

At the request of Council Member Hansen, Mr. McMahon explained that most large institutions have guidelines, which will tell the lawyers they hire what is acceptable, what they are expected to do, what they can bill for, and what are appropriate costs. Failing having these written guidelines, there are "generally accepted billing practices." Attorneys are required to adhere to a Code of Ethics and there is an ethical overlay pertaining to what is appropriate for an attorney to charge. Examples of what would be looked for in an audit include 1) charges for paralegals to do clerical work such as sending faxes, making copies, etc.; 2) transient billers, i.e. people who work only a few hours and are not providing real value to the case; and 3) long billing days that are serial in nature and not associated with an imminent trial.

Mayor Pro Tempore Howard asked whether other firms were interviewed that had not previously done an audit of Mr. Donovan. She suggested that only item three of Council Member Hansen's recommendation (i.e. authorize Council Member Hansen and Mayor Hitchcock to negotiate a contract) be considered, as she felt it was important for the entire Council to review the contract before approval. She emphasized the importance of hearing from other law firms that were interviewed, and particularly those that could provide a neutral approach to the audit.

Council Member Hansen reported that he and Mayor Hitchcock interviewed 15 to 20 attorneys of various firms who specialized in environmental law. The focus of their discussion was on the legal strategy that the City is involved in, not the audit. Of all the firms, there was only one who had not already heard about the case. Most of the others were following it closely, were up to date on its current status, and had read the legal decisions and motions. Mr. Hansen recalled that he originally had suggested that the City auditors conduct the audit and a law firm be hired to provide a second opinion on the legal strategy. Since locating Barger & Wolen, due to the unique advantage of its experience in the Lincoln case, he felt the best course of action at this time would be to pursue the audit and delay further quests until the results are known.

Mayor Pro Tempore Howard clarified that at no time has she challenged the request of Council to hire a firm to audit the billings of Envision Law Group. She believed it was important that if Council was changing the direction of the motion made on September 17 that it should elucidate the fact that at this time the action desired is to move forward solely with hiring a firm to do an audit.

MOTION #1 / VOTE:

The City Council, on motion of Council Member Beckman, Hitchcock second, unanimously voted to move forward on item one of the motion made on September 17, 2003 (i.e. 1. *Financial agreement with Lehman Bros., Inc.; evaluation to include possible ramifications to the City of various scenarios that could occur*) and engage an outside professional firm to audit billing records of Envision Law Group; and that items two and three of the motion made on September 17, 2003 (i.e. 2. *Determine other potential options and strategies that the City could pursue in regard to the PCE/TCE litigation; and 3. Valuation of the City's current strategy*) be stayed until such time as Council deems it necessary to proceed.

Council Member Hansen commented that the original strategy of trying to resolve this matter without taxpayer's dollars was a good strategy and continues to be so.

MOTION #2 / VOTE:

The City Council, on motion of Council Member Hansen, Hitchcock second, 1) authorized that the law firm of Barger & Wolen LLP be retained pending successful resolution of any conflicts and a background/reference check; 2) appropriated an initial retainer of \$50,000; and 3) authorized Council Member Hansen and Mayor Hitchcock to negotiate the contract, which will then be reviewed by the City Council before being formally initiated. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Land, and Mayor Hitchcock

Noes: Council Members – Howard

Absent: Council Members – None

- I-2 "Presentations of proposals by Bill Mathis of Mathis and Associates and Dale Edwards of Century Assembly Church and selection of facilitator for team-building sessions with Council Members"

Deputy City Manager Keeter recalled that at the July 30 meeting Council discussed the possibility of conducting a team-building session to enhance the relationship amongst Council Members as a working group. As a result, staff identified five facilitators who had the capability of providing such a service. Council Members Hansen and Land conducted interviews with potential facilitators and have invited two to give presentations to Council. Bill Mathis was not present.

Dale Edwards stated that he had experience in team building, strategic planning, development of leadership, and leadership dynamics. He has been a pastor for 34 years and stated that the dynamic of interpersonal issues, whether it is secular or sacred, are basically the same. He noted that conflict is not inherently destructive or constructive; it is a matter of people having different perspectives. The team-building process would be to help Council identify the unique differences that Council Members individually and collectively bring together so that the inherent strength/weakness can be worked together for a purpose. The success is determinant upon Council's willingness to make it happen.

In answer to Council Member inquiries, Mr. Edwards recommended that he meet individually with each participant prior to the team-building session. Following that he suggested a day long off-site session, perhaps on a Saturday, be held, after which it would be determined whether follow up or ongoing sessions are desired. Mr. Edwards stated that he would not be charging a fee for the service as he did not want the appearance of a conflict of interest.

Mayor Hitchcock suggested that all Council appointees participate in the team-building session(s) as well.

Council Member Land stated that his only relationship with Century Assembly Church (at which Dale Edwards serves as Pastor) is through a non profit called Building Blocks that strives to improve the quality of life for residents on the east side. He suggested that Council select a facilitator after Mr. Mathis has an opportunity to provide a presentation on December 17.

Council Member Beckman mentioned that he was a member of Heartland Community Church; however, he and his wife recently attended a few services at Century Assembly Church and may be continuing to do so in the near future.

MOTION / VOTE:

There was no Council action taken on this matter.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

Council Member Hansen made a motion, Hitchcock second, to continue with the remainder of the meeting following the 11:00 p.m. hour.

DISCUSSION:

Council Member Land recalled that the last time a vote was taken to continue the meeting at 11:00 p.m. it was estimated to conclude in 30 minutes; however, it actually took two hours. Mr. Land explained that he had an obligation to represent the City early tomorrow morning for the San Joaquin Partnership, after which he would go to work, and would represent the City again that evening for the Housing Authority. He expressed difficulty in carrying out these duties when meetings continue to 1:00 or 2:00 a.m. He stated that he would support the motion to continue if business could be completed before midnight.

Mayor Hitchcock could not predict the adjournment time, as she was unaware of what comments or inquiries Members of Council might bring up under the remaining topics.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Mayor Hitchcock

Noes: Council Members – Land

Absent: Council Members – None

I. REGULAR CALENDAR (Continued)

- I-3 "Direct City Manager regarding Finance Department office space and authorize City Manager to execute or reject necessary contracts and agreements"

Public Works Director Prima reported that the City has been working toward relocating the Finance Department from its current leased space on Pine Street, due to various concerns about the building. Staff had received direction from Council to temporarily relocate the Finance Department to space at the parking structure. After preparing plans and specifications for tenant improvements to the parking structure and accepting bids, the Acordia building at 300 West Pine Street became available for lease. Staff has had discussions with the owner of the Acordia building pursuant to direction received from Council in closed session. Referring to a "blue sheet" (filed) entitled Finance Department Office Space Cost Analysis, Mr. Prima reported that the one-time costs for the parking structure total \$507,750. The owner of the Acordia building is willing to finance \$206,650 for the tenant improvements, etc. over the term of the lease. The annual costs at the Acordia building would be \$155,980, whereas at the parking structure it would be \$16,262. Staff recommends moving the Finance Department to the Acordia building and requests authorization from Council to allow the City Manager to execute a five-year lease. Additionally it is requested that the City Manager be authorized to bid and execute the contract for the move, e.g. installation of voice/data communications, office furniture, etc., and to reject bids on the tenant improvements at the parking structure.

Discussion ensued regarding the cost of space at the parking structure.

Mayor Hitchcock expressed concern over the significantly higher cost of leasing the Acordia building. She pointed out that a term of five years amounts to a difference of \$81,000 versus \$780,000, and ten years would be \$162,000 versus \$1.5 million. She recalled that the impetus for relocating the Finance Department was due to concerns of the employees. The Acordia building is said to have a musty smell in the basement and an allegation that someone heard it too was a "sick building." She feared that the same type of employee complaints would surface again in the future if the Department moved to the Acordia building. Ms. Hitchcock stated that she would not support the recommendation because of the huge cost savings associated with utilizing the space at the parking structure.

Council Member Hansen was under the impression that questions had been asked about whether there have been any problems with the Acordia building or complaints from employees, and that the answer was that there was not.

In reply, Mr. Prima stated that that was his understanding as well; however, he did not personally pursue that line of questioning.

Council Member Hansen suggested that an escape clause be built into the agreement in the event that funds become available to remodel the old public safety building.

MOTION:

Council Member Hansen made a motion, Beckman second, to adopt Resolution No. 2003-220 rejecting all bids for the Parking Structure Tenant Improvements project and directing the City Manager to negotiate necessary contracts and agreements for the Acordia Building, 300 West Pine Street, with final approval pending the ability to escape from the contract, if deemed necessary.

DISCUSSION:

Mayor Pro Tempore Howard noted that previously when discussions occurred regarding relocating the Finance Department, the Acordia building was not available as an option. She believed that the Acordia building offered the benefit of close proximity to City Hall and moving the drop box onto the property site for a more convenient drive-through type service. She was opposed to tying up retail space at the parking structure for an indefinite amount of time.

VOTE:

The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – Mayor Hitchcock

Absent: Council Members – None

- I-4 “Introduce ordinance amending Title 5, Permits and Regulations, Chapter 5.40, Adult Oriented Businesses, repealing and reenacting Sections 5.40.300, 5.40.305, 5.40.400, and 5.40.405 of the Lodi Municipal Code relating to adult-oriented businesses”

City Attorney Hays reported that the City recently settled litigation with a local adult business owner that required the City to amend its adult business ordinance. The revisions set forth in the ordinance are designed to remove certain elements of the adult business ordinance that were challenged. The requirement that applicants provide fingerprints and social security numbers with their application for participation in an adult-oriented business has been removed. The social security number remains a voluntary option for the applicant to provide in order to assist in eliminating name confusion. Also eliminated was the prohibition of licensure for applicants with a prior history of criminal or civil adult business violations. These changes were reviewed with Police Chief Adams with regard to whether he felt it would hinder any enforcement activities that could be undertaken and he did not believe that it would.

In reference to a letter from Reverend Stephen Jarrett distributed to Council via a “blue sheet” (filed), Mr. Hays stated that he found it offensive because it was a personal attack on him. He pointed out that the settlement reached in this matter was fully briefed and discussed with Council and the City Attorney’s Office carried out the directions of Council.

Council Member Hansen concurred with Mr. Hays and noted that Council makes such decisions based on the probability of winning the case, and discusses the principle of the matter versus the potential cost to the taxpayer. In this case the chances of winning were slim to none. In his letter, Reverend Jarrett indicates that the only cost to the City would be the City Attorney’s salary. Mr. Hansen pointed out that this was an incorrect statement, because when a case is lost there is a requirement to pay the attorney’s fees for the other side.

Mayor Hitchcock agreed with Council Member Hansen’s comments.

Council Member Beckman expressed great sadness over the course that the nation has gone, especially in the 9th Circuit. He noted that the Constitution is laden with references to a religious creator, to the Supreme Being. The nation’s founding fathers were all very strongly religious men. He believed that something had gone drastically wrong in the course of America where its people now find themselves in a purely secular nation, with a purely secular government. He stated that those that have any type of moral values have become those who are prohibited from espousing them.

PUBLIC COMMENTS:

- Ken Owen stated that he too was disappointed that it had to cost the City \$105,000 to settle the case, in addition to revising its ordinance. He stated that effort should be made to keep adult-oriented businesses from coming into Lodi and that he would continue to fight to rid the City of the two that are currently operating. He agreed with the action that was taken by the City and did not believe that Council was left with any option in the matter.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Howard, Hansen second, unanimously introduced Ordinance No. 1737 amending Title 5, Permits and Regulations, Chapter 5.40, Adult Oriented Businesses, repealing and reenacting Sections 5.40.300, 5.40.305, 5.40.400, and 5.40.405 of the Lodi Municipal Code relating to adult-oriented businesses.

- I-5 "Introduce ordinance repealing and reenacting Lodi Municipal Code Chapter 12.06, Downtown Lodi Business Improvement Area No. 1, Section 12.06.090, "Collection of Benefit Fee," and Chapter 3.01, Business Tax Certification, Section 3.01.460, "Enforcement," relating to collection and enforcement of various fees" was ***pulled from the agenda pursuant to staff's request.***

I. REGULAR CALENDAR (Continued)

- I-6 "Introduce ordinance amending Title 8, Health and Safety, Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by repealing and reenacting Section 8.24.010, "Definitions," Subsection 2, and Section 8.24.040, "Liability," Subsection F, to the Lodi Municipal Code relating to abatement action costs and recovery issues"

City Attorney Hays reported that in October 2002 the 9th Circuit Court issued a decision in the Fireman's Fund case. The case was brought to try and invalidate the municipal enforcement ordinance the City has had with regard to environmental matters known as the Municipal Environmental Response and Liability (MERLO) ordinance. The court validated the vast majority of the MERLO, but expressed some concern over the definition of abatement action costs, which provided for recovery even where the City was a liable party under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act), and also included recovery of attorneys' fees as an element of abatement cost. The ordinance under consideration for introduction addresses those issues. He stated that an amendment to the ordinance is appropriate, as the court ruled that the MERLO should be preempted by federal law to the extent that the MERLO defined abatement action costs in a manner permitting the City to recover attorneys' fees and interest in abatement action concerning a site, or portion of a site, where the City was deemed a responsible party under federal CERCLA. The amended ordinance limits the definition of abatement action costs as including litigation costs or attorneys' fees imposed by the MERLO to those instances where the City is not liable. It expressly authorizes the recovery of attorneys' fees by a prevailing party pursuant to Government Code Section 38773.5 in specific actions.

In answer to Council Member Hansen, Mr. Hays explained that this issue was briefed and submitted as a petition for certiorari to the United States Supreme Court and that was declined in April 2003.

Council Member Hansen stated that he needed additional time to review the ordinances for items I-6 and I-7; Mayor Hitchcock concurred.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Hitchcock second, unanimously voted to reschedule agenda items I-6 and I-7 to the City Council meeting of December 17, 2003.

- I-7 "Introduce ordinance amending Title 8, Health and Safety, Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by repealing and reenacting Section 8.24.090, "Miscellaneous Provisions," Subsections D and E, and adding Subsection F to the Lodi Municipal Code relating to the availability of contribution" was ***pulled and rescheduled for the City Council meeting of December 17, 2003.***

J. ORDINANCES

None.

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Mayor Pro Tempore Howard thanked the Public Works Department for responding to concerns regarding a new street light signal, and placing signs at the intersection of Ham Lane and Century Boulevard, which clarify that left turns are to yield on the green light.
- Council Member Hansen asked the City Manager to see that the alley on Elm Street is cleaned and the lighting improved.
- Mayor Hitchcock announced that a representative from Senator Poochigian's Office would be at the Carnegie Forum tomorrow from 1:00 to 4:30 p.m.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn announced the birthdays of Nancy Martinez on November 11 and Susan Lake on December 1. Today he attended the city managers Council of Governments (COG) meeting, at which the city manager of Stockton proposed that the number of COG board representatives be changed to correlate with the population of its member cities.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 12:01 a.m., Thursday, November 20, 2003.

ATTEST:

Susan J. Blackston
City Clerk